

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MONTE RUSSELL and DANIEL FRIEDMAN,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

WELLS FARGO AND COMPANY and WELLS
FARGO BANK, N.A.,

Defendants.

CASE NO: C 07 3993 CW

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION TO STRIKE
OR OTHERWISE INVALIDATE
DEFENDANT WELLS FARGO
BANK, N.A.'S RULE 68 OFFERS OF
JUDGMENT**

On _____, Plaintiffs' Motion to Strike or Otherwise Invalidate Defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") Rule 68 Offers of Judgment came on for hearing in this Court. Defendants opposed the motion. Having considered the parties' papers and oral argument on the Motion, the Court hereby GRANTS Plaintiff's Motion, and orders and finds as follows:

1. Pursuant to the Fair Labor Standards Act ("FLSA") and authorities interpreting it, the Court finds that Wells Fargo's Rule 68 Offers of Judgment to Plaintiffs Susette Walsh, dated August 29, 2008, and to Randal Scott, Patrick Moschelle, and Kevin Casner, dated September 2, 2008, contravene the well established rule prohibiting wholly private settlement of FLSA claims, and are thus invalid;

2. The Court further finds that, at this stage of the collective action, there is no basis for determining whether Wells Fargo's Rule 68 offers of judgment are fair and reasonable as the

1 parties have yet to exchange Rule 26(a) initial disclosures and have only recently commenced
2 formal merits discovery. To date, Wells Fargo has failed to provide Plaintiffs with all the
3 supporting documentation concerning the calculations which form the bases for its Rule 68 offers
4 of judgment; and without such documentation, neither the Plaintiffs nor the Court is able to
5 evaluate whether the Rule 68 offers are fair and reasonable as required by the FLSA and the
6 authorities interpreting it;

7 3. The Court further finds that Wells Fargo incorrectly calculated the deadlines by
8 which Plaintiffs Walsh, Scott, Moschelle, and Casner must accept or decline Wells Fargo's Rule
9 68 offers of judgment, rendering Wells Fargo's offers of judgment procedurally invalid;

10 4. The Court strikes the individual Rule 68 offers made by Wells Fargo accordingly
11 and pursuant to this ruling, Plaintiffs Walsh, Scott, Moschelle, and Casner are not subject to the
12 consequences of refusing the offers under Rule 68; and

13 5. Wells Fargo is ordered to refrain from issuing any further Rule 68 offers without
14 first seeking and obtaining leave of this Court.

15 **IT IS SO ORDERED.**

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17 Dated: _____, 2008

18 _____
19 THE HONORABLE CLAUDIA J. WILKEN
20 UNITED STATES DISTRICT COURT JUDGE
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